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In re Application of STEWART et al :
U.S. Application No.: 10/540,718 :
PCT Application No.: PCT/CA2003/002007 :
Int. Filing Date: 24 December 2003 :
Priority Date Claimed: 24 December 2002 : DECISION
Attorney Docket No.: 3998-051954 :
For: METHODS OF DIAGNOSING, :
PREVENTING, AND TREATING EARLY :
ONSET OF PULMONARY :
HYPERTENSION :

This is in response to applicant's "Petition to Revive" filed 21 December 2006, which is being treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

BACKGROUND

On 24 December 2003, applicant filed international application PCT/CA2003/002007, which claimed priority of an earlier United States application filed 24 December 2002. A copy of the international application was communicated to the USPTO from the International Bureau on 15 July 2004. The thirty-month period for paying the basic national fee in the United States expired on 24 June 2005.

On 24 June 2005, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 17 January 2006, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that an oath or declaration in compliance with 37 CFR 1.497 must be filed.

On 21 December 2006, applicant filed the present petition under 37 CFR 1.181.

On 27 December 2006, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909).

DISCUSSION

The petition states that the Notification of Missing Requirements mailed 17 January 2006 was never received.

According to the Official Gazette at 1156 OG 53 and MPEP 711.03(c), a petition to withdraw a holding of abandonment based on failure to receive an Office communication must include: (1) a statement by the practitioner that the Office communication was not received by the practitioner, (2) a statement by the practitioner that he searched the application file jacket and docket records and that the search indicates that the Office communication was not received, and (3) a copy of the docket record where the non-received Office communication would have been entered had it been received and docketed.

With regard to item (1) above, applicant's representative has provided the required statement.

With regard to item (2) above, applicant's representative has not provided the required statement.

With regard to item (3) above, applicant's representative has not supplied the required docket record. Such docket record should list responses due to the USPTO on 17 March 2006 for all cases handled by the representative's firm or for all cases handled by the representative if the record for the entire firm is not available. This docket record must illustrate the absence of any listing of a response due to a Notification of Missing Requirements.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.181 is DISMISSED without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181".

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.


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